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NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

Miscellaneous Docket No. 906

IN RE YAHOO! INC. and GOOGLE, INC.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 03 2009
BY DAVID J. MALAND, CLERK
DEPUTY
Petitioners.

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in case no. 6:08-CV-509, Judge John Love.

ON PETITION FOR WRIT OF MANDAMUS

Before SCHALL, PROST, and MOORE, Circuit Judges.PROST, Circuit Judge.ORDER

Google, Inc. moves without opposition to withdraw its petition for a writ of mandamus and to vacate the July 10, 2009 order of the United States District Court for the Eastern District of Texas denying petitioners' motion to transfer venue. Google also indicates that Yahoo! Inc. is no longer participating in the case due to settlement.

Although we grant the motion to withdraw the petition for a writ of mandamus, we deem the better course is to require that the parties first move in the district court if they seek vacatur of the district court's order. See U.S. Bancorp Mortgage Co. v. Bonner Mall P'ship, 513 U.S. 18, 29 (1994) (mootness by reason of settlement does not necessarily justify vacatur of a judgment under review; court of appeals may instead require that the matter be presented to the district court for consideration).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to withdraw the petition is granted.

(2) The motion to vacate the district court's order regarding transfer is denied without prejudice to the parties requesting such relief from the district court.

FOR THE COURT

SEP - 1 2009

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Michael A. Jacobs, Esq.
Paul D. Clement, Esq.
Eric M. Albritton, Esq.
Judge, USDC E.D. Tex.
Clerk, USDC E.D. Tex.

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FILED
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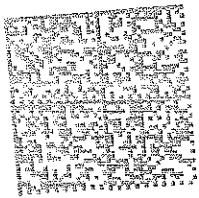
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JAN HORBALY
CLERK

U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT
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